IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 8, 2009

IN RE JOSHUA L. H.

Appeal from the Juvenile Court for Knox County
No. A-9551 Timothy Irwin, Judge

No. E2009-00766-COA-R3-JV - Filed October 29, 2009

A petition for paternity was filed in June 1990 by the Tennessee Department of Children's Services ("DCS") seeking an order declaring Luther H. ("Father") to be the biological father of Joshua L. H. ("Joshua"). At a hearing on the petition, Father acknowledged paternity in open court and waived DNA testing. Accordingly, an order was entered establishing Father as the biological father and ordering him to pay child support. Over eighteen (18) years later, Father, who is incarcerated and proceeding pro se, filed a "Petition to Determine Paternity" claiming that he no longer was certain that he is Joshua's biological father. Father sought an order requiring DNA testing be conducted and that the State be required to pay for the testing. The Juvenile Court Referee dismissed the petition, finding that the 1990 order declaring Father to be the child's biological father was res judicata to the current petition. The Referee's order was confirmed by the Juvenile Court Judge. Father appeals, and we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Luther H., pro se Appellant.

Robert E. Cooper, Jr., Attorney General and Reporter, and Amy T. McConnell, Assistant Attorney General, Nashville, Tennessee, for the Appellee, State of Tennessee *ex rel.* Rhonda F.

MEMORANDUM OPINION[1]

Background

Rhonda F. ("Mother") gave birth to Joshua on August 25, 1989. In June of 1990, a petition for paternity was filed on Mother's behalf by DCS. In this petition, DCS sought to have Father adjudged the biological father of Joshua and ordered to pay child support. Father admitted in open court that he was Joshua's biological father and expressly waived DNA testing. Based on Father's admission and other proof offered at the hearing, the Referee entered an order finding Father to be Joshua's biological father. This order was affirmed and ratified by the Juvenile Court Judge on August 7, 1990.

According to Father, Joshua underwent a medical procedure when he was one year old. Prior to the procedure, both Mother and Father were asked to and did donate blood in the event blood was needed by Joshua during the procedure. Father claims he told the nurse that his blood type was O-negative, and the nurse told him that if he was O-negative, Joshua could not be his biological child based on Joshua's blood type.

At some point, Father was arrested for non-payment of child support.[2] Father claims he was told by his attorney that because he "had admitted in open court that he was the father of Joshua . . . he could not seek DNA Testing ever again."

The next item in the record is a Petition to Determine Paternity filed by Father on December 31, 2008. In this petition, Father requested that a DNA test be performed at the State's expense so he could find out whether he was Joshua's biological father. Joshua was nineteen years old when the petition was filed.[3] Father asserts that because he is incarcerated at the South Central Correctional Facility in Clifton, Tennessee, he is unable to afford a DNA test and, therefore, the State should be required to pay for the testing.

In March 2009, the Juvenile Court Referee dismissed the petition, finding that "[p]aternity has already been established for the child at issue by order of this court entered 8-7-90, along with Respondent's waiver of paternity testing. This issue of parentage is res judicata."

The Juvenile Court Judge confirmed the findings of the Referee. According to the order entered by the Juvenile Court Judge:

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[1] Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

[2] Father does not state when this arrest took place.

[3] The record is unclear whether Father's child support obligation ceased when Joshua turned 18.

> This cause came to be heard on the 17th day of July, 2009. Respondent filed a *pro se* Petition to Determine Paternity on December 31, 2008. That Petition was dismissed on March 16, 2009, with the Court finding that paternity had already been established for the child at issue by order of August 7, 1990. That order, especially when combined with [Father's] signed waiver of parentage testing, makes the issue of paternity res judicata.
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> * * *
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> The Court heard testimony from [Father] and argument from the State. After considering the proof in this case, the Court finds the Child Support Magistrate properly dismissed Respondent's Petition.
>
> IT IS HEREBY ORDERED that the Order of Dismissal entered March 16, 2009 is hereby confirmed in its entirety. However, this in no way restricts Respondent to arrange testing at his expense. This Court will not order the State to pay for said testing.

Father appeals claiming the August 1990 order was not a final order and, therefore, could not be res judicata to resolution of the current petition. Father also claims that he should not be required to pay for a DNA test because he is indigent.

Discussion

The factual findings of the Juvenile Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Father attacks the validity of the 1990 order with a claim that the Referee's order was not confirmed by the Juvenile Court Judge. Father claims that the lack of confirmation results in the Referee's order not being a final judgment which, in turn, negates DCS's claim that the 1990 order is res judicata.

The State supplemented the record on appeal with a certified copy of the Juvenile Court Judge's order entered on August 7, 1990, confirming the order of paternity entered by the Referee. Thus, the basis for Father's attack on the 1990 judgment is altogether without merit.

Father does not argue that res judicata would not apply if the Referee's order from 1990 was confirmed and there is a final judgment. Likewise, Father does not offer any authority to support a claim that he can attack the 1990 order eighteen years after it established his paternity.

Father argues that he should "be given the opportunity to know that the child is his or someone elses. (sic)" The Juvenile Court's order does not prohibit a DNA test from being performed. Rather, the Juvenile Court determined that it was not appropriate to require the State to pay for the test. A DNA test can be conducted anytime Father and Joshua so desire, but they cannot force the State to pay for the testing. In short, Father cites us to no authority supporting his claim that, eighteen years after the valid 1990 order was entered and after Joshua has reached the age of eighteen, the State can be forced to pay for a DNA test simply because Father is indigent. The judgment of the Juvenile Court is, therefore, affirmed.

Conclusion

The judgment of the Juvenile Court is affirmed, and this cause is remanded to the Juvenile Court solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Luther H., and his surety, if any, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE